

FARMINGTON POLICE DEPARTMENT

POLICY AND PROCEDURE



Policy Number:
242-13

Effective Date:
07/11/2017

Subject:
Constitutional Requirements for Questioning
by Law Enforcement Personnel

Approved by:

Steven D. Hebbe, Chief of Police



PURPOSE:

To insure that officers in discharging their authorized duties shall not violate the Federal and State constitutional rights and protections of any individual as identified in legal statutes, operational procedures, and judicial interpretation.

POLICY:

It is the policy of the Farmington Police Department to establish procedures to ensure compliance with all applicable constitutional requirements regarding in-custody interviews, interrogations, and access to counsel.

PROCEDURE:

No person subject to the provisions of the Delinquency Act [32A-2-1 NMSA 1978] who is alleged or suspected of being a delinquent child shall be interrogated or questioned without first advising the child of the child's constitutional rights and securing a knowing, intelligent and voluntary waiver.

Juveniles who have come under reasonable police suspicion of committing a delinquent act, having committed a delinquent act, alleged to have committed a delinquent act, or who are planning on committing a delinquent act, have been afforded enhanced Constitutional protections by New Mexico case law [State v. Javier M, 2001-NMSC-030.] as well as by the New Mexico Children's Code; "Basic Rights" [32A-2-14 NMSA 1978].

Rights according to New Mexico Children's Code include advisement, at a minimum, that:

1. Juveniles have the right to remain silent and that any statements made by them may be used against them in court;
2. Juveniles have the right to contact their parents, guardian or custodian;
3. Juveniles have the right to have their parents, guardian, or custodian, or any attorney present during any questioning;
4. Juveniles have the right to call an attorney and if a juvenile cannot afford an attorney, an attorney will be appointed to represent the juvenile free of charge.

A verbal explanation of the juveniles rights is acceptable but the use of the “Juvenile Advice and Waiver of Rights” form or the use of the department issued “Juvenile Rights Waiver Card” in conjunction with the officer’s articulation of the event should strengthen the Children’s Code expectation of a “knowing, intelligent and voluntary waiver.”

The extended Children’s Rights do not apply in an “investigatory detention” according to New Mexico case law. The Supreme Court of New Mexico ruled in State v. Javier M. (paragraph 47) that the officer can advise the child that:

1. They have the right to remain silent;
2. And anything they say can be used against them in any delinquent hearing.

Officers should keep in mind that these provisions are not subject to police contact with juveniles during a non-delinquent offense. Examples of investigations involving a non-delinquent act would be traffic stops where Municipal or Magistrate Courts have jurisdiction.

An interview is any questioning of a person who is believed to possess knowledge or information that is related to an investigation, and this can include any conversation with a suspect, witness, victim, or other individual.

An interrogation is any questioning of an individual which is designed to elicit information, statements, admissions, and/or a confession from that individual regarding a crime or suspected crime. In addition to direct questioning, an interrogation includes any words or actions on the part of a police officer which are likely to elicit an incriminating response from a suspect.

A consensual or voluntary encounter with police is any encounter in which a suspect or person knowingly and voluntarily agrees to speak to police when not taken into custody. A consensual encounter is generally determined by the suspect or person’s affirmative declaration that they understand they are not in custody and that they are free to leave at any time they so decide. Under such circumstances, any person who wishes to no longer answer questions, or who wishes to leave the area in which they have been contacted by police, may do so.

Persons who have consented to a consensual police encounter need not be advised of their Miranda Rights.

Custodial interrogation refers to any questioning which is initiated by a law enforcement officer after a person has been taken into custody or otherwise deprived of their freedom of action in some significant way. The threshold for determining if a person is in custody is determined through the perception of a reasonable person placed into similar circumstances. If, under the totality of the circumstances, a person believes him or her to have been taken into custody and a reasonable person would concur under the same circumstances, then the person shall be considered to be in custody and their Constitutional privileges related to custodial interrogation shall apply. The intent of the officer in placing a suspect or person into custody in these circumstances is irrelevant. An individual must be advised of their Miranda rights before any custodial interrogation occurs.

Common circumstances by which a person may perceive themselves to be in custody can include, but are not limited to:

1. The suspect or person is involuntarily transported from a place or location of their choice to a location of police choosing;

2. The suspect or person is secured or restrained by any device that prevents their free movement without adequate information or understanding as provided by the investigating or detaining officer that would cause them to understand otherwise;
3. The suspect or person is placed into a police vehicle prisoner transportation area, with or without handcuffing, without adequate information or understanding as provided by the investigating or detaining officer that would cause them to understand otherwise;
4. The suspect or person is surrounded by multiple police officers or police equipment and the actions of the officers tend to cause them to believe that they are in custody.

Under current case law, the non-coercive atmosphere of a routine traffic stop does not amount to custody for Miranda purposes.

In addition to advising a person of their Miranda rights, the person being interrogated must understand their rights and waive their rights before any questioning occurs. Miranda involves two separate rights:

1. The right to remain silent; and
2. The right to an attorney.

An individual who invokes their right to remain silent can be approached by a law enforcement officer again regarding questioning, as long as efforts of the officer do not overbear the will of the suspect. If an individual invokes their right to an attorney; the officer may no longer question the suspect. However, an officer may resume questioning if the suspect initiates the contact and affirmatively waives their right to an attorney.

If an individual invokes their right to an attorney, the officer may make an effort to obtain the services of an attorney on behalf of the suspect in order to attempt further interviewing or interrogation of the suspect; however, there is no legal requirement that the officer do this. The only legal requirement in this regard is that the officer no longer questions the suspect once the right to an attorney has been invoked.

Miranda rights cannot be invoked by an attorney on behalf of a suspect. They may only be invoked by the individual who is the subject of the custodial interrogation.

All custodial interrogations in felony cases shall be electronically recorded by means that include audio, video, or both, when reasonably feasible. These custodial interrogations must be electronically recorded in their entirety, and the recordings must include the advising of Miranda rights.

New Mexico law requires that all law enforcement officers record the entire custodial interrogation in felony cases unless there is good cause not to record, and good cause is defined as:

1. Electronic recording equipment is not reasonably available;
2. Equipment failed and obtaining replacement equipment was not feasible;
3. The individual being interrogated refused to be recorded;

4. The statement was made in a court proceeding or grand jury proceeding.

If a custodial interrogation in a felony case is not recorded, the law requires the officer to simultaneously note the good cause for not recording the statement. This information should be included in the offense report documenting the investigation.

Defendants held in custody shall be made available for arraignment or any court mandated hearing at the earliest time possible or as local court rules require.